

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON ETHICS

Call to Order: By **CHAIRMAN JOE MCKENNEY**, on January 15, 2003 at 5:30 P.M., in Room 455 Capitol.

ROLL CALL

Members Present:

Rep. Joe McKenney, Chairman (R)
Rep. John Musgrove, Vice Chairman (D)
Rep. Jill Cohenour (D)
Rep. Gail Gutsche (D)
Rep. Bob Lawson (R)
Rep. Ron Stoker (R)

Members Excused: None.

Members Absent: Rep. Dick Haines (R)
Rep. Bill Wilson (D)

Staff Present: Dave Bohyer, Legislative Branch
Joanne Gunderson, Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. The time stamp for these minutes appears at the end of the content it refers to.

Committee Business Summary:

Hearing(s) & Date(s) Posted: None
Executive Action: None

CHAIRMAN JOE MCKENNEY called the meeting to order. He informed the Committee members this meeting was designed to inform them of their duties. He informed the members this was a meeting for clarification purposes.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 1.4}

CHAIRMAN MCKENNY introduced **Dave Bohyer, Legislative Staff**. **Mr. Bohyer** distributed information to the Committee.

EXHIBIT (eth08a01)

Mr. Bohyer informed the Committee that they may never have to meet unless the Rules Committee refers something to them of an ethical nature. "If we never have to meet is a good thing." The purpose of this committee is to comply with the requirement for a Code of Ethics by the Constitution. This applies to the Legislators, State and Local elected officials, and utilities. He explained the statutes that would apply.

The Ethics Committee functions much like a Grand Jury. In a review mode of ethical breach. The members review the facts, make findings, draw conclusions and recommend to the Full House for consideration by disposition by the Committee of the Whole.

The Ethics Committee has the same authority as a Standing Committee. The Committee can ask for research, hold informational hearings, and can hold hearings for any bill assigned to them, also it can take Executive Action.

EXHIBIT (eth08a02)

{Tape: 1; Side: A; Approx. Time Counter: 1.4 - 4.9}

Mr. Bohyer then referred to the exhibits previously distributed. These documents were prepared for the 2001 Ethics Committee. He has added to it due to statutory and minor rules changes. "Ethics is what you do when no one is watching. We hope that Legislators would presume someone is always watching." He said he would discuss the constitutional roots, the statutory provisions, legislative rules and refer to *Mason's Manual of Rules and Procedures*.

Constitutional Provisions: Article V, Section 10. Article VIII, Section 4.

Statutory Provisions: Title 2, Chapter 2 MCA-Standards of Conduct, Code of Conduct. 2-2-103: Public Trust-public duty, 2-2-104: Rules of conduct for public officers, legislators and public employees, 2-2-111: Rules of conduct for legislators. 2-2-112: Ethical requirements for legislators. 2-2-135: Ethics committees. 2-2-136: Enforcement for state officers, legislators, and state employees-referral of complaint involving county attorney. Specifically in 2-2-111,

Mr. Bohyer stated, "Legislators cannot accept compensation for action taken on legislation, either actively working for passage of legislation or actively working against legislation." Provisions here are for legislators not elected officials.

He further explained the differences between the Senate and House in procedural matters.

{Tape: 1; Side: A; Approx. Time Counter: 4.9 - 11.8}

REP. COHENOUR asked **Mr. Bohyer** a question that is inaudible to hear completely. **Mr. Bohyer** responded with his answer regarding when a member thinks they have a conflict and when the member is in a position to vote. **REP. CONHENOUR** then asked **Mr. Bohyer** an additional question that is also inaudible. **Mr. Bohyer** replied to that question regarding conflict of interest. **Mr. Bohyer** addressed the Committee about a discrepancy in 2-2-135 regarding the Ethics Committees being listed as Standing Committee. This committee has two members from each party, with a total of no more than four members. This Committee has the responsibility of enforcing their own code in other words "doing your own laundry." Under Section 2-2-136 regarding the County Attorney as an elected official having a dual role.

If the code of ethics is violated by a member but not in the context of a legislative act, punishment can be a fine of not less than \$50 not more \$1000. The appeal process was also discussed.

There are Joint Rules, House Rules and Senate Rules. Under the Joint Rules, there are no references to ethics. There is mention of the Conflict of Interest phrase mentioned in the Montana Constitution. That is addressed under Joint Rules 1050 under Conflict of Interest.

House Rule 30-10, addresses the procedure whereby the Speaker shall appoint Standing Committees. One of these is the Ethics Committee. The Speaker appoints, but there is language that the Speaker shall determine the size and makeup of the Committee and if that conflicts with the Statute, the Statute will prevail.

Mr. Bohyer then explained the voting process.

{Tape: 1; Side: A; Approx. Time Counter: 11.8 - 19.2}

There are 4 basic rules adopted by this Committee:

1. Complaint and how the complaint is written up and submitted.
2. Consideration of the complaint.

CHAIRMAN MCKENNEY interrupted **Mr. Bohyer** with a question: "Does the complaint come from the Rules Committee?" **Mr. Bohyer** replied to the Chairman that that is correct. The Rules Committee acts as a Pre-Grand Jury and then refers to the Ethics Committee. **Mr. Bohyer** continued with rules #3 and #4.

3. Formal complaint process goes forward from there.
4. The Ethics Committee submits a recommendation to the Committee of the Whole.

CHAIRMAN MCKENNEY asked **Mr. Bohyer** another question regarding Open Meetings Law. **Mr. Bohyer** responded, "there is a balancing act with the Montana Constitution that states all meetings are open to the public, however there is also a person's right to privacy." So if the person exercises his/her right to privacy, the meeting can be closed. **VICE CHAIR MUSGROVE** inquired whether it is the Committee's obligation to inform the person who committed the alleged breach about their right to privacy. **Mr. Bohyer** informed **VICE CHAIR MUSGROVE** that there is no obligation, but it would be a courtesy to advise them so that they could close the hearing and also the right to counsel.

{Tape: 1; Side: A; Approx. Time Counter: 19.2 - 22.7}

Mr. Bohyer then referred to *Mason's Manual of Rules and Procedures*. There are situations where the legislative rules don't address the case at hand. Under the *Mason's Manual*, the Ethics Committee has broad authority to investigate. This refers to Section 7-97 and continues throughout. The Ethics Committee may issue subpoenas, compel attendance of witnesses and administer oaths. A court order may be obtained with a Contempt of Court citation issued if subject does not appear. This Committee has authority to recommend action to the Full House. There is no purpose for this Committee during the interim after Sine Die.

EXHIBIT (eth08a03)

Mr. Bohyer informed the Committee of a "typo" on page 25 of House Rules; referring to 30-60, should be 30-50.

{Tape: 1; Side: A; Approx. Time Counter: 22.7 - 27.4}

CHAIRMAN MCKENNEY spoke to the Committee about a common question that is asked regarding "conflict of interest" in carrying a bill. There is a common practice for legislators to carry bills in their area of expertise or experience. An anecdotal story was

relayed to the Committee involving "widgets, investors and carrying the legislation."

CHAIRMAN MCKENNEY stated that if someone does come to a committee member, an informal discussion may be held for clarification.

(Tape: 1; Side: A; Approx. Time Counter: 27.4 - 30. end)

REP. STOKER asked **CHAIRMAN MCKENNEY** for a further explanation.

VICE CHAIR MUSGROVE informed the Committee that he has assembled a booklet that includes information about preventing harassment in the workplace, and asked if harassment could be an issue involving ethics. **CHAIRMAN MCKENNEY** replied by saying "Yes, that could be an issue." **REP. COHENOUR** asked if "we" should inform the Rules Committee about a situation involving that subject.

CHAIRMAN MCKENNEY responded that the Rules Committee has the ability to make their own decisions. **Mr. Bohyer** also responded to the harassment issue and informed the Committee that employees of the House are covered by a sexual harassment policy already in place. An embarrassment upon the institution would be decided by the Rules Committee then referred to the Ethics Committee.

REP. COHENOUR informed the Committee she will be carrying two bills, one involving a DUI surcharge with the money going in a special fund used for education regarding DUI and offenders etc.

REP. COHENOUR'S husband is a Montana State Highway Patrolman, and there is a possibility that his department could see some of that money. (**REP. MUSGROVE** left the room) **CHAIRMAN MCKENNEY** responded by saying "that would be a stretch that would be a conflict of interest." He further explained an interpretation of a "stretch." **Mr. Bohyer** stated this situation is referred to in the "Code" section 2, sub 5. **REP. LAWSON** cites an example also. **REP. GUTSCHE** commented about the entire dialogue.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 7.2}

REP. STOKER stated that he is a Realtor/Broker and has been asked by the Association of Realtors to carry a bill. He has excused himself from conversations. **CHAIRMAN MCKENNEY** stated that the rule of thumb is a "gut check." **Mr. Bohyer** informed members that he is not an attorney so cannot give legal advice.

{Tape: 1; Side: B; Approx. Time Counter: 7.2 - 9.6}

ADJOURNMENT

Adjournment: 6:10 P.M.

REP. JOE MCKENNEY, Chairman

JOANNE GUNDERSON, Secretary

JM/JG

EXHIBIT (eth08aad)